

### 3. Sales of Goods Act, 1930

- **Commencement:** This act came into force w.e.f. 1 July 1930.
- **Extent & Application:** It deal with contract of sale but does not deal with the sale of immovable property. The transaction relating to immovable properties, e.g., the sale, lease, gifts, etc., are governed by a separate Act known as 'Transfer of Property Act, 1882'. This act extends to whole of India, including the State of Jammu and Kashmir.
- **The act does not deal with contract of sale of services or pledge of goods, mortgage of property or barter of goods.**

#### Meaning and definitions

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. [Sec. 4(1)]

In other words, contract of sale of goods is the contract whereby one party (called the seller) (i) transfers, or (ii) agrees to transfer the property (i.e. ownership) in the goods to another party (called the buyer) for a price (i.e. consideration). It should be noted that the term contract of sale includes both (i) sale and (ii) agreement to sell.

#### Definitions

##### Buyer

Section 2(1), A person, who buys or agrees to buy the goods.

##### Delivery

Section 2(2), It means voluntary transfer of possession from one person to another.

##### Delivery State

Section 2(3), Goods are said to be in delivered state, when they are in such state that the Buyer would be bound to take the delivery of them in accordance with the contract.

#### Documents of title to Goods

Section 2(4), of the Sale of Goods Act, 1930 recognizes the following as documents of title to goods:

- (i) Bill of lading,
- (ii) Dock warrant,
- (iii) Ware housekeeper's certificate,
- (iv) Wharfinger's certificate,
- (v) Railway receipt,
- (vi) Multi - modal transport document,
- (vii) Warrant or order for the delivery of goods, and
- (viii) Any other document used in the ordinary course of business as document of title

#### Goods

##### Section 2(7)

- Goods mean every kind of movable property other than actionable claims and money, and it includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.

- You may notice that 'money' and 'actionable claims' have been expressly excluded from the term 'goods'. 'Money' means the legal tender. 'Money' does not include old coins and foreign currency. They can, therefore, be sold or bought as goods. Sale and purchase of foreign currency is, however, also regulated by the Foreign Exchange Management Act,
- 'Actionable claims', like debts, are things which a person cannot make use of, but which can be claimed by him by means of a legal action. Actionable claims cannot be sold or purchased like goods, they can only be assigned, as per the provisions of Transfer of property Act.
- Grass, growing crops, trees to be cut and their log wood to be delivered, malba of a building to be demolished, etc. are goods. Similarly, things like goodwill, copyright, trade mark, patents, water, gas electricity are all goods and may be the subject matter of a contract of sale.

### Seller

Section 2(13), A person, who sells or agrees to sell the goods,

#### Agreement to sell

- Where transfer of property in goods takes place at future date.

#### Sale

- Where transfer of property in goods takes place at the time of contract.

### Essential elements of Valid Contract of Sales

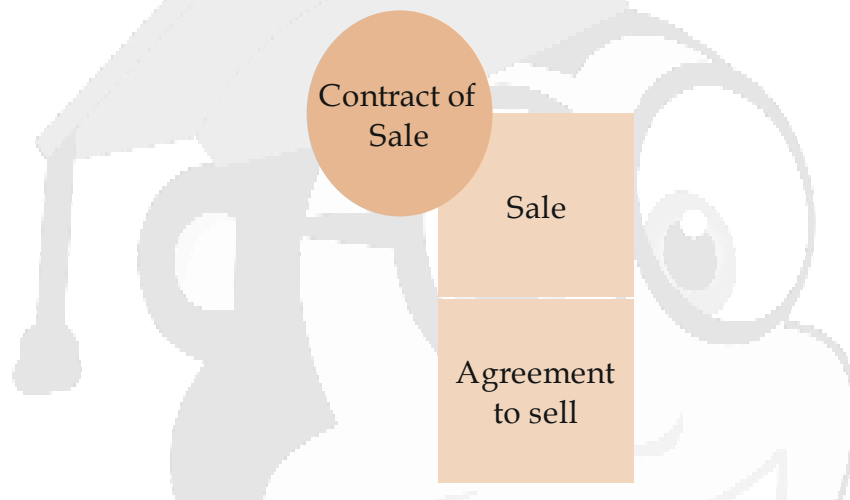
The following are the essentials of valid contract of sale :

- (1) **Bilateral Contracts** : There must be two parties, one seller and another buyer. Seller and buyer must be different. (*Kitson Vs. Hardwick*). Part owner can sell goods to another part owner.
- (2) Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both sellers and buyers [*State of Gujarat Vs. Ramanlal S & W (1965)*]. But a partner may buy goods from the firm or sell goods to the firm.
- (3) There must be movable goods as subject matter of contract viz., Shares, patent rights, copyrights, trademarks, growing crops, grass, fruits, minerals, water, electricity etc.
- (4) There must be a transfer of property in goods. It means general property. (i.e. ownership)
- (5) There must be price involved. Price means money consideration for sale of goods, (*S.S. Circulation Vs. State of Tamil Nadu*).
- (6) Exchange of goods for goods is barter.
- (7) If Exchange is partly for goods and partly for money it is sale. (*Aldridge Vs. Johnson*)
- (8) All essential elements of valid contract must be observed.
- (9) The contract of sale can be entered into, expressly or impliedly.
- (10) There should be free consent given by the parties involved in the contract. (*Khedut Sahkari Ginning and Pressing Society Vs. State of Gujarat*)

- (11) There should be transfer of property. 'General Property' is transfer of total ownership and 'Special Property' is the right to retain possession of goods until the entire amount is paid.

**Requisites for contract of sale:**

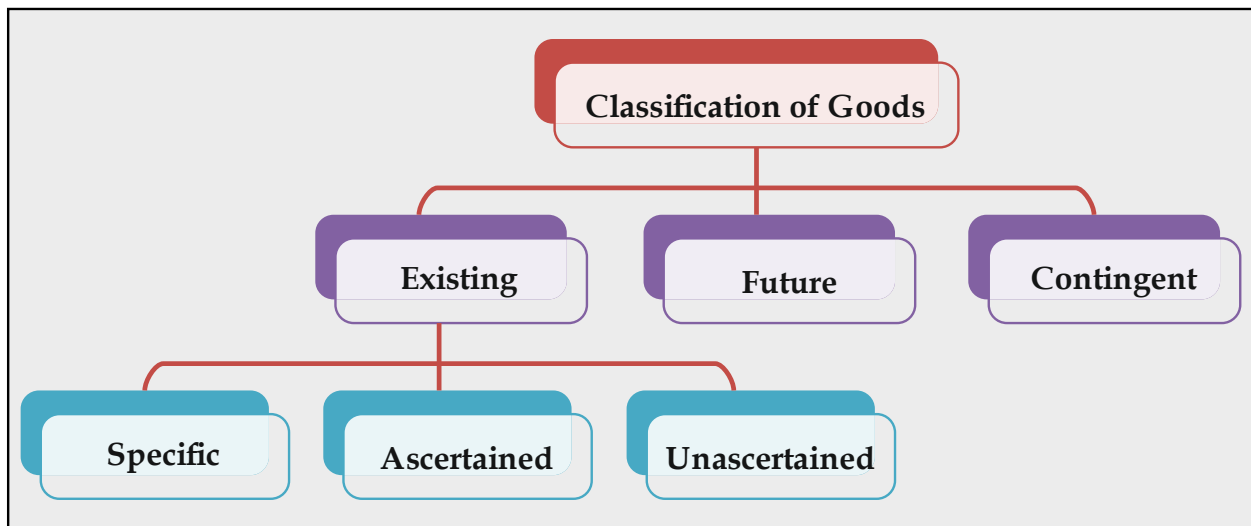
- There must be a valid offer to buy or to sell and a valid acceptance to buy or sell the goods. Acceptance should be unqualified.
- The offer and acceptance should be for the sell or buy of goods.
- Offer to buy or sell must be for the price.
- There may be immediate delivery or delivery in installments or delivery at a future date. Delivery can be postponed at the request of buyer or seller.
- There may be immediate payment or payment in installments or payment in future.
- Contract may be written, oral or implied.

**Difference Between Sale and Agreement to Sell**


Sale	Agreement to Sell
Immediate transfer of ownership to buyer	Ownership remains with the seller
It is executed contract	It is an executory contract
It creates right in rem for buyer	It provides right in personam for buyer and seller
Seller can sue for price – if not buyer	Seller can sue for damages
Risk passes to buyer	Risk doesn't pass to buyer
Buyer can get goods even if seller has become insolvent	Buyer can get proportionate share in money but can't get goods
Delivery to receiver if buyer becomes insolvent before the payment of price	Delivery can be refused by seller if buyer becomes insolvent.

*\*Right in rem: Enjoy goods against the whole world*

*\*Right in personam: Right against the seller only*



### Types of Goods

The goods may be classified into following categories:

- (1) **Existing Goods** : These are the goods which are possessed and owned by the seller at the time of sale. These goods are of three types:
  - (a) **Specific Goods** : The goods must be identified and agreed upon by the parties at the time of contract of sale.
  - (b) **Unascertained Goods** : These goods are not identified and agreed upon at the time of the contract of sale. These goods are merely described by the parties at the time of contract of sale.
  - (c) **Ascertained Goods** : These goods are identified post-formation of contract of sale and agreed upon by the parties.
- (2) **Future Goods** : These goods are produced or acquired by the seller post-formation of contract of sale. These goods do not exist at the time of contract of sale. These types of goods cannot be sold, there can only be the agreement to sell in future. These goods are to be manufactured or acquired by the seller after the making of the contract of sale.
- (3) **Contingent Goods** : These are the type of goods whose acquisition depends upon the happening or non-happening of an uncertain event; they are also known as future goods.

### Document of title of goods

A document of title to goods means any document which is used in the ordinary course of business as proof of possession or control of goods.

Following are the types of documents of title of goods which can be used in common parlance:

1. **Bill of lading**: Possessor of this document is entitled to get the mentioned goods from the captain of the ship.
2. **Dock-warrant**: Possessor of this document is entitled to get the mentioned goods from the dock-owner.
3. **Warehouse-keeper's or wharfinger's certificate**: Possessor of this document is entitled to get the mentioned goods from the Warehouse-keeper's or wharfinger.

4. **Railway receipt:** Possessor of this document is entitled to get the mentioned goods from the Railway company issuing it.
5. **Delivery warrant or order:** It is kind of order given by the owner of the goods to deliver the goods to the person mention or to the bear, as the case may be.

### Consequences of Destruction of Specific Goods-Sec 7-8

The consequences of destruction of specific goods can be discussed under the following three heads:

- If goods perish before making the contract
  - (i) Contract is void – ab – initio, due to bilateral mistake of the parties as to existence of subject matter.
  - (ii) It is to be noted that if the seller has knowledge about the destruction of goods, even then he enters into the contract of sale with buyer, then seller is bound to compensate to the buyer.
- Where a part of the goods is perished before making contract
  - (i) If the goods were divisible, then the contract can be enforced party and if the goods was indivisible, then the contract becomes void – ab – initio.
- If goods perish after the “Agreement to sell; but before’ sale [Sec. 8]
  - (i) The contract is void if subsequently the goods have perished, and there is no fault on the part of the buyer or seller in perishing the goods.

### Price of Goods (Section 9 – 10)

Price means the money consideration for a sale of a Goods 2(10)

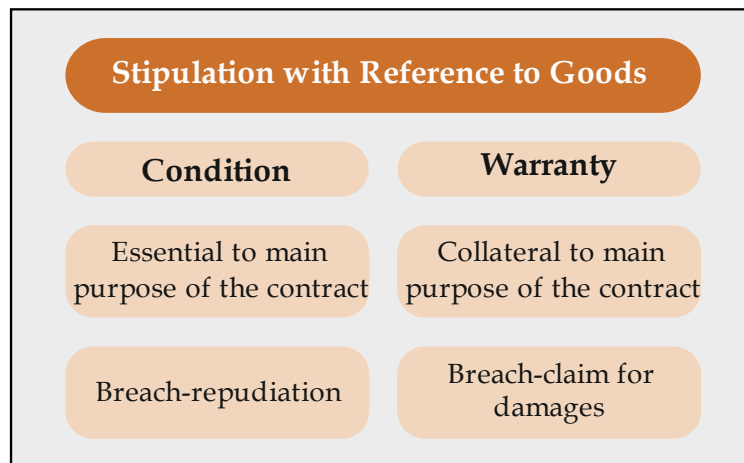
The following are the modes of determining price: [Section 9]

- Price is mentioned in the contract. It is the most common technique of ascertaining the price. Here, parties decide the price in advance.
- Price may be ascertained as per the technique specified in contract.
- Price may be ascertained in accordance to custom and usage of trade. This technique is applicable if parties regularly trade.
- If the price is not fixed as above-mentioned techniques, then the buyer will pay the seller a reasonable price. Reasonable price depends upon the fact and circumstances.

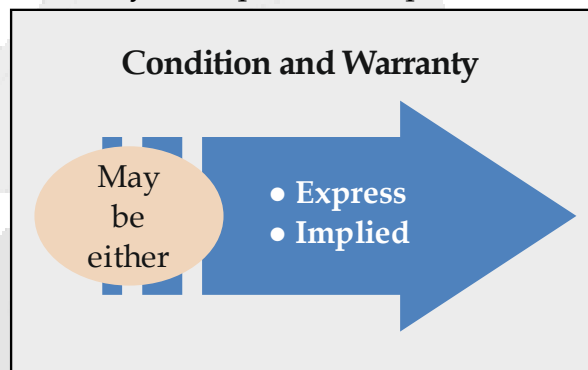
**Fixation of price by third party. (Sec. 10):** If it is so, contract shall specify name of third party. If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price. If the third party is prevented from fixing price, defaulting party is liable for the damages.

### Conditions and Warranties

There are certain stipulations which are mentioned in the contract of sale, they are subject to may be condition or a warranty.



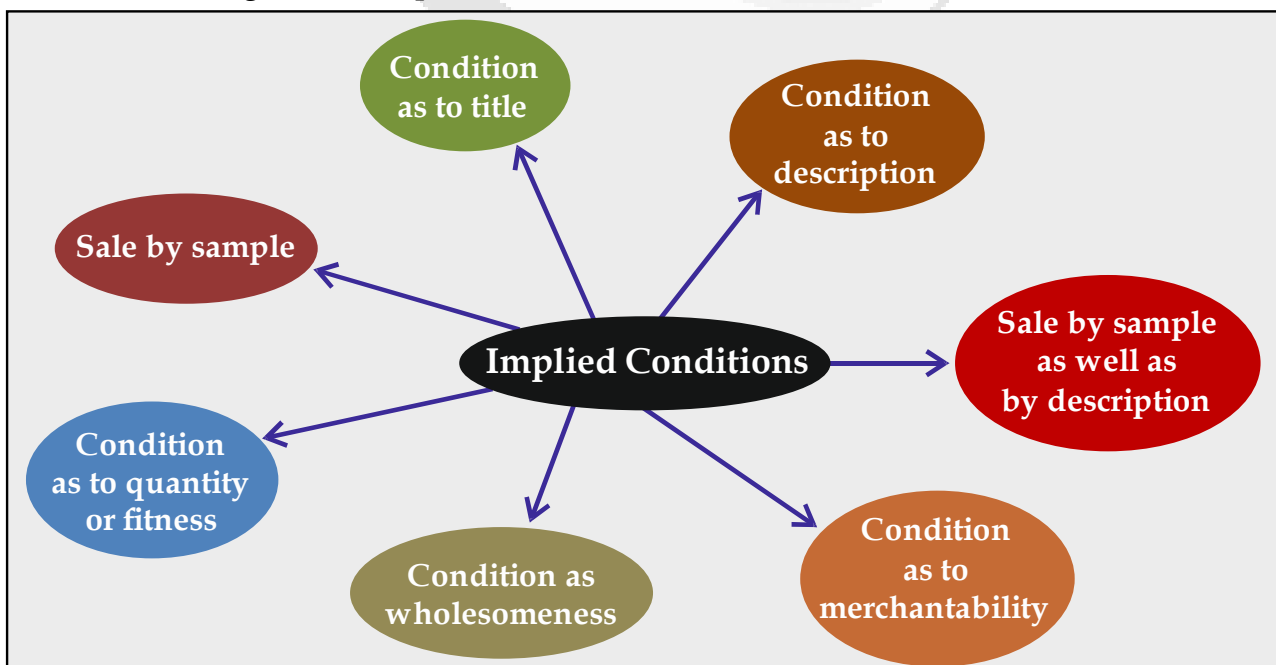
**Condition:** According to Section 12(2), “A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated”  
The conditions and warranties may be express or implied :



- Express conditions and warranties are those, which the parties agree expressly, i.e. orally or in writing.
- Implied conditions and warranties are those, which are implied by the law in the absence of any agreement to the contrary.

### Implied Conditions

The following are the implied conditions which are contained in the Sales of Goods Act:





**Conditions as to title – Section 14(a)**

- There is an implied condition on the part of the seller that
- In the case of sale, the seller has a right to sell the goods, and
- In the agreement to sell, the seller will have a right to sell the goods at the time of passing of ownership in goods.
- If the title of seller out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

**Conditions as to description – Section 15**

Where the goods are sold by description, there is an implied condition that the goods shall correspond to the description.

**Sale by sample–Sec 17**

- Where the goods are sold by sample, the following are implied conditions.
- The bulk shall correspond to sample in quality.
- The buyer shall be given a reasonable opportunity to compare the goods with the sample.
- The goods shall be free from any defect, rendering them unmerchantable. It is to be noted that this implied condition applies only in the case of latent defects, i.e. those defects which cannot be discovered by ordinary inspection. In fact, such defects are discovered when the goods are put to use or by examination in laboratories. The seller is not liable for apparent or visible defects which can be discovered by examination.

**Sale by description as well as sample–Sec 15**

If the sale is by sample as well as description, both conditions shall be satisfied. Goods must correspond with sample as well as description.

**Conditions as to quality and fitness for buyer's purpose – Sec 16**

- Where the buyer, expressly or impliedly, tells the seller the particular purpose for which he needs the goods and relies on the skill or judgment of the seller, there is an implied condition that the goods shall be reasonably fit for such purpose.
- When the article can be used only for one particular purpose, the buyer need not inform the seller the purpose for which the goods are required.

**Exception to the Conditions as to Quality or fitness**

- The condition as to quality or fitness' well not apply, if the buyer is suffering from an abnormality, which renders the goods unsuitable for a particular purpose and the buyer does not inform the seller about that abnormally.
- Where the goods can be used for a number of purposes, the buyer should inform the particular purpose for which such goods were required. If he does not disclose, there is no such conditions of quality or fitness.

### Conditions as to Merchantability

- Where goods are bought by description from a seller, who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality.
- **'Merchantability' means that there is no defect in the goods, which renders them unfit for sale.** Thus, a watch that will not keep time and a pen that will not write cannot be regarded as merchantable.

### Condition as to wholesomeness

In the case of eatable and foodstuff, there is an implied condition that the goods shall be wholesomeness, i.e., free from any defect which renders them unfit for human consumption.

### Waiver of conditions

#### Voluntary Waiver

- Waive performance of contract
- Elect to treat condition as warranty

#### Compulsory Waiver

- Non-severability of contract
- Fulfilment of condition excused by law

**Warranty:** According to section 12(3), "A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated"

In other words, stipulation which is collateral to the main purpose of the contract is warranty. Breach of warranty gives rise to the aggrieved party right to claim damages, but contract cannot be terminated.

### Implied Warranties

The following are the implied warranties which are contained in the Sales of Goods Act:

#### Implied Warranties

*Warranty as to quiet possession*

*Warranty as to non-existence of encumbrances*

*Disclosure of dangerous nature of goods*

*Warranty as to quality or fitness by usage of trade*

### Warranty as to quiet possession – Sec 14

- In absence of any contract showing contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is disturbed in the enjoyment of the goods, he can claim damages from the seller.



### Warranty against encumbrances – Sec 14

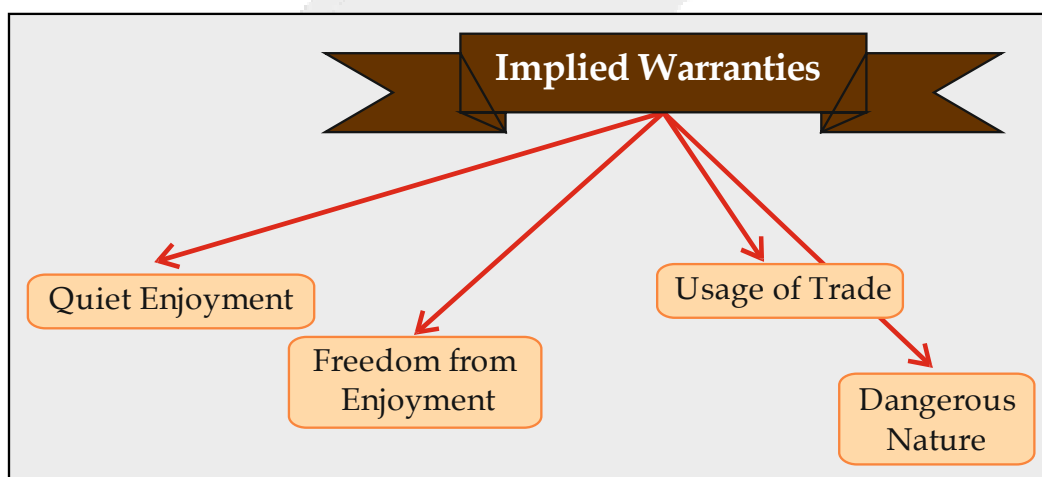
- Unless the circumstances of the case are such as to show a contrary intention, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any party not declared to the buyer before or at the time contract is made. However, there will not be any such warranty if charge is declared to buyer at the time of sale.

### Warranty as to quality and fitness by usage of Trade – Sec 16

- An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

### Warranty to disclose the dangerous nature of goods;

If there are any dangers attached with the goods sold and in the knowledge of the seller, he must warn the buyer about that probable danger.



### Doctrine of Caveat Emptor

- The doctrine of 'Caveat Emptor' means "let the buyer beware".
- It means that the buyer while purchasing goods must act with a "third eye and ear", i.e.,
- He should be careful to see that the goods purchased will serve his purpose well.
- If the buyer is not careful and he finds later on that the goods do not serve his purpose, he cannot hold the seller liable for it.
- The seller is under no obligation to tell the defects of his articles.
- However, in the following exceptions Doctrine of caveat emptor is not applicable:
- Implied conditions as to quality or fitness.
- In case of edible items, implied condition of wholesomeness is applicable, and goods should be not fit for human consumption then buyer is not liable, but seller will be liable.
- Usage or custom of trade
- When the consent of buyer is obtained by fraud, the doctrine of caveat emptor is not applicable.

### Exceptions to Caveat Emptor

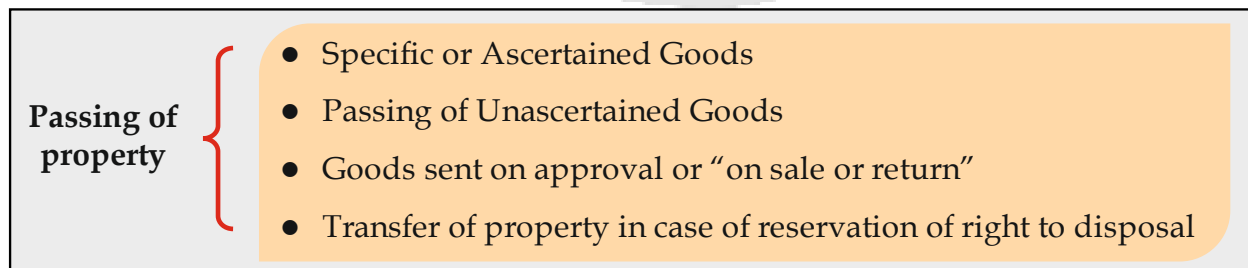
- When purpose of buying is made known to the seller, then it is implied that the goods fit for such purpose. (exception is not applicable if goods are sold under a patent or trademark)
- When the goods are bought by description, i.d. merchantable goods.
- When the contract implies the condition of wholesomeness of goods.
- When there is an usage of trade
- When goods have latent defect
- When contract is induced by fraud
- When the goods are sold by description
- When goods are sold by sample
- When goods are sold by sample as well as description
- When implied condition as to title applies
- When implied warranty as quiet possession apply
- When implied warranty as to freedom from changes applies

### Transfer of Ownership

Goods must be ascertained - Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.



#### (1) Property passes when intended to pass (Section 19)



1. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
2. For the purpose of ascertaining the intention of the parties' regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

3. Unless a different intention appears, the rules contained in Section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

#### Stages of goods while passing of property

Specific goods in a deliverable states



Specific goods to be put into a deliverable state



Specific goods in a deliverable state when seller has to ascertain price.

#### Specific goods in a deliverable state (Sec 20)

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

#### Specific goods to be put into a deliverable state (Sec 21)

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

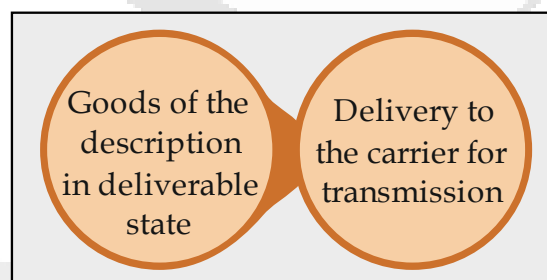
#### Specific goods in a deliverable state (Sec 22)

When the seller has to do anything thereto in order to ascertain price.- Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

#### (2) Goods must be ascertained

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. [Section 18]

The rules in respect of passing of property of unascertained goods are as follows:



#### Sale of unascertained goods and appropriation (Sec 23)

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made.

**Delivery to carrier**

Where, in pursuance of the contract, the seller delivers the goods

**(3) Goods sent on approval or 'on sale or return' (Sec 24)**

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer

- (a) when he signifies his approval or acceptance to the seller adopting the transaction.
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if the time has not been fixed, on the expiration of a reasonable time.

**(4) Reservation of right of disposal (Sec 25)**

- (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.
- (2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal :

- (1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved the right of disposal.
- (2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill. And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him. It should be noted that Section 25 deals with "conditional appropriation" as distinguished from 'unconditional appropriation' dealt with under Section 23 (2).

**Risk Prima facie passes with property (Sec 26)**

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Provides also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

**Transfer of Title (Sections 27-30)****Sale by person not the owner (Sec 27)**

Subject to the provisions of this act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell. Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the buyer act is good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

**Exceptions :** In the following cases, a non-owner can convey better title to the bona -de purchaser of goods for value.

**(1) Sale by a Mercantile Agent :** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

- (a) If he was in possession of the goods or documents with the consent of the owner;
- (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

**(2) Sale by one of the joint owners (Section 28) :** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

**(3) Sale by a person in possession under voidable contract :** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

**Sale by one of joint owners (Section 28)**

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person how buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

**Sale by person in possession under voidable contract (Section 29)**

When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.



**Seller or buyer in possession after sale (Section 30)**

1. Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery to transfer were expressly authorised by the owner of the goods to make the same.
2. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

**Performance of the Contract**

The performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment for them by the buyer, in accordance with the contract.

**Duties of seller and buyer (Section 31)**

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

**Payment and delivery are concurrent conditions (Section 32)**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

**Delivery (Sec 33)**

Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

**Effect of part delivery (Sec 34)**

A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

**Buyer to apply for deliver (Sec 35)**

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

**Rules as to delivery (Sec 36)**

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are the time of the sale, and goods agreed



to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

- (2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

- (4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact?
- (5) Unless otherwise agreed, the expense of and incidental to putting the goods into a deliverable state shall be borne by the seller.

#### **Delivery of wrong quantity (Sec 37)**

- (1) Where the seller delivers to the buyer a quantity of good less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate.
- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
- (3) Where the seller delivers to the buyer the goods, he contract to sell mixed with goods of a different description not included in the contract., the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.
- (4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

#### **Installment deliveries (Sec 38)**

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.
- (2) Where there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not a right to treat the whole contract as repudiated.

#### **Delivery to carrier or wharfinger (Sec 39)**

- (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of

the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

- (2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer made decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.
- (3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

#### **Risk where goods are delivered at distant place (Sec 40)**

Where the seller of goods agrees to deliver them at his own risk at place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

#### **Buyer's right of examining the goods (Sec 41)**

- (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
- (2) Unless otherwise agreed, when the seller tender's delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract,

#### **Buyer not bound to return rejected goods (Sec 42)**

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient that he intimates to the seller that he refuses to accept them.

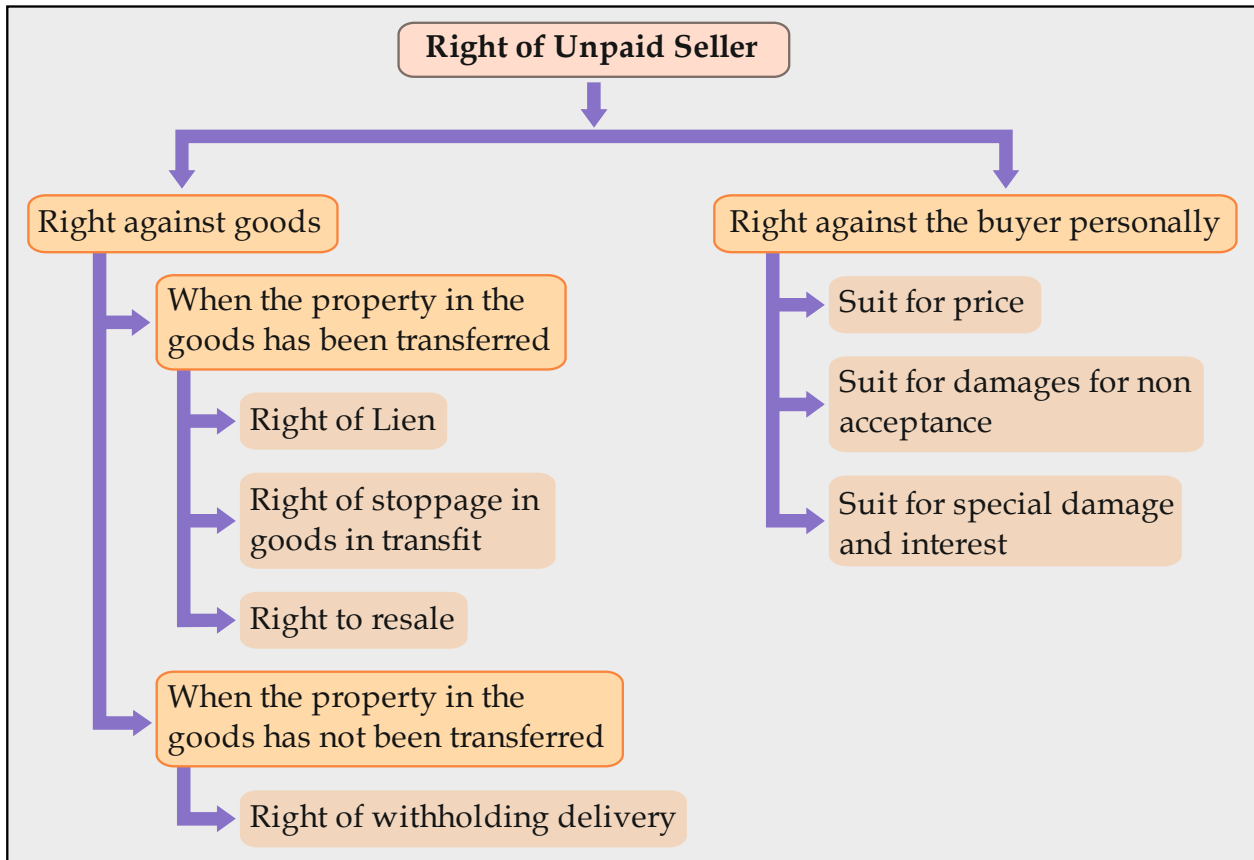
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#### **Liability of buyer for neglecting or refusing delivery of goods (Sec 44)**

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

## Rights of Unpaid Seller Against the Goods



### “Unpaid seller” defined. (Sec 45)

- (1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act
  - (a) When the whole of the price has not been paid or tendered.
  - (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the conditions on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
- (2) In this Chapter, the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

### Unpaid seller’s rights (Sec 46)

- (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law.
  - (a) a lien on the goods for the period while he is in possession of them,
  - (b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them.
  - (c) a right of re-sale as limited by this Act.
- (2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

**Seller's lien (Sec 47)**

- (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:
  - (a) where the goods have been sold without any stipulations as to credit.
  - (b) where the goods have been sold on credit, but the term of credit has expired.
  - (c) where the buyer becomes insolvent.
- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

**Part delivery (Section 48)**

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

**Termination of lien (Section 49)**

- (1) The unpaid seller of goods loses his lien thereon:
  - (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
  - (b) when the buyer or his agent lawfully obtains possession of the goods,
  - (c) by waiver thereof.
- (2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

**Right of stoppage in transit (Section 50)**

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

**Duration of transit (Section 51)**

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

- (5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.
- (6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

#### **How stoppage in transit is affected (Section 52)**

- (1) The unpaid seller may exercise his right to stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate to his servant or agent in time to prevent a delivery to the buyer.
- (2) Whether notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

#### **Effect to sub-sale or pledge by buyer (Section 53)**

- (1) Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.
- (2) Where the transfer is by way of pledge, the unpaid seller may require the pledge to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledge and available against the buyer.

#### **Sale not generally rescinded by lien or stoppage in transit (Section 54)**

- (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.
- (2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notices to the buyer of his intentions to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and



recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notices are not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

- (3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.
- (4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on, the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

### **Suits/ Remedies for Breach of The Contract**

Breach of contract on sales of goods can only occur if the sale involves a legally binding purchase contract between a buyer and a seller.

There are two types of remedies available :

- (1) Seller's Remedies
  - (a) Remedies against goods
  - (b) Remedies against buyer personally
- (2) Buyer's Remedies

#### **(1) Seller's Remedies/ Rights against the buyer personally**

##### **Suit for price (Section 55)**

- (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- (2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

##### **Damages for non-acceptance (Section 56)**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

##### **Repudiation of contract before due date (Sec 60)**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contracts as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and use for damages for the breach.

##### **Interest by way of damages and special damages (Sec 61)**

- (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.



- (2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price
  - (a) to the seller in a suit by him for the amount of the price.- from the date of the tender of the goods or from the date on which the price was payable.
  - (b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller- from the date on which the payment was made.

## **(2) Buyer's Remedies/Rights against the seller**

### **Damages for non-delivery (Section 57)**

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

### **Specific performance (Section 58)**

Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the court may deem just, and the application of the plaintiff may be made at any time before the decree.

### **Remedy for breach of warranty (Sec 59)**

- (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may (a) Set up against the seller the breach of warranty in diminution or extinction of the price; or (b) Sue the seller for damages for breach of warranty.
- (2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

**Suit for interest :** The act gives the right to the buyer to recover the interest, if lawfully interest is recoverable.

**Suit for refund of the price :** When the buyer has already paid the price of any part thereof then he is entitled to receive such amount.

### **Suit for repudiation of contract before due date**

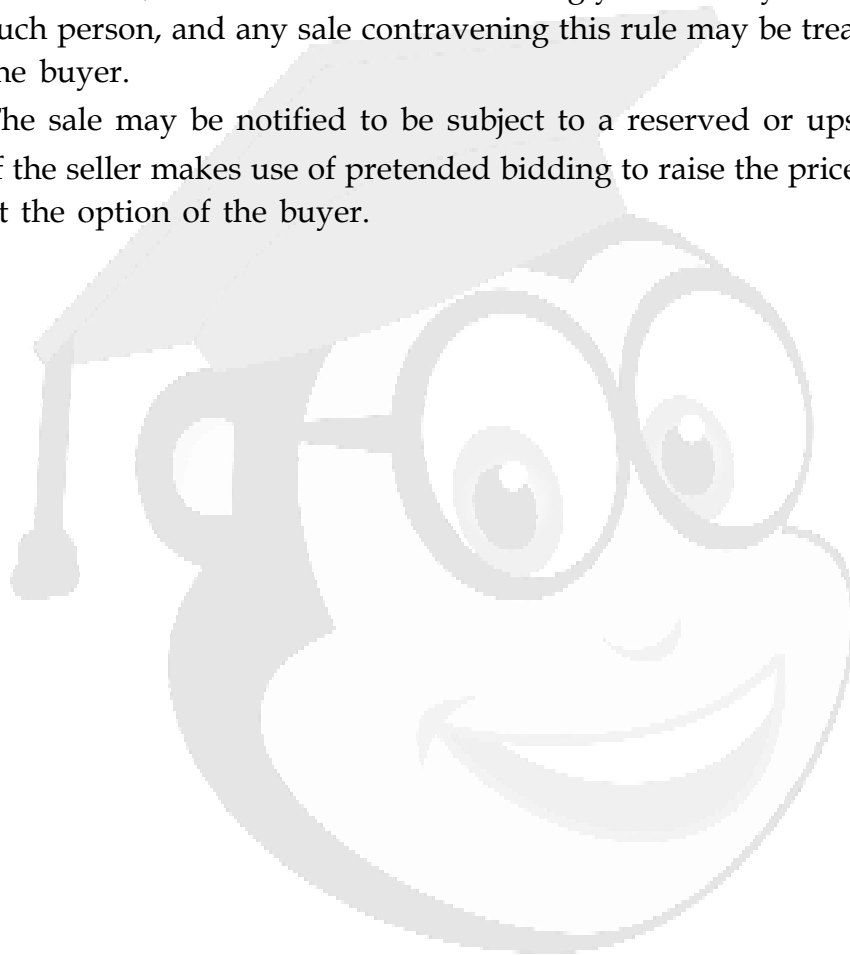
### **Auction sale (Section 64)**

Auction is a public sale, where goods are offered to be taken by the highest bidder from among the public.

In the case of sale by auction :

- (1) Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.

- (2) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid.
- (3) A right to bid may be reserved expressly by or on behalf of the seller and, where such rights is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction,
- (4) Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale contravening this rule may be treated as fraudulent by the buyer.
- (5) The sale may be notified to be subject to a reserved or upset price.
- (6) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



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## Exercise-6 : Review Your Progress

1. The sale of goods act deals only with goods which are \_\_\_\_\_ in nature  
 (A) Immovable (B) Movable  
 (C) Specific (D) All of the above
2. Goods that are identified at the time of contract of sale is called \_\_\_\_\_ goods  
 (A) Specific Goods (B) Ascertained goods  
 (C) Clear Goods (D) Both A & B
3. \_\_\_\_\_ is a stipulation which is collateral to purpose of contract  
 (A) Condition (B) Warranty  
 (C) Guaranty (D) Collateral Contract
4. In agreement to sell the transfer of property in goods from the seller to the buyer takes place  
 (A) At the end of contract (B) Immediately  
 (C) In a future Date (D) Both (A) & (C)
5. Which of the following is not a subject matter in a sale of goods Act  
 (A) Trade mark (B) Good will  
 (C) Money (D) Water
6. As per sale of goods act movable goods does not include  
 (A) Gas (B) Growing crop  
 (C) Electricity (D) Money
7. A sale is said to be completed when \_\_\_\_\_ is transferred from one party to the other party  
 (A) Money (B) Goods  
 (C) Interest (D) Ownership
8. In contract of sale the payment of price is \_\_\_\_\_ to the transfer of property in goods  
 (A) Concurrent (B) Important  
 (C) Mandatory (D) Immaterial
9. An agreement to sell will become a sale in \_\_\_\_\_  
 (A) Future date (B) Immediate effect  
 (C) 30 days (D) None of the above
10. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for \_\_\_\_\_  
 (A) Price (B) Interest  
 (C) Credit (D) Value